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MISSOULA, MT

2007 JAN 24 PM 5 28

PATRICK E. DUFFY

BY \_\_\_\_\_

IN THE UNITED STATES DISTRICT ~~COURT~~ CLERK  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

MICHAEL ELLENBURG,	)	CV 04-62-M-DWM
	)	CV 04-116-M-DWM - JCL
PETITIONER,	)	
	)	
vs.	)	ORDER
	)	
MIKE MAHONEY,	)	
	)	
RESPONDENT.	)	
	)	

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation in this matter on November 16, 2006. Plaintiff timely objected on November 28, 2006. Plaintiff therefore is entitled to de novo review of the record. 28 U.S.C. § 636(b) (1).

Judge Lynch recommended dismissing all except two of the claims in Petitioner's Petition for Writ of Habeas Corpus. United States Magistrate Judge Leif B. Erickson previously determined these claims were procedurally defaulted and ordered Petitioner to show cause and prejudice or a fundamental miscarriage of justice excusing the procedural default. In responding to the show cause order, Petitioner addressed the

merits of his speedy trial habeas claim, but failed to address cause and prejudice or a fundamental miscarriage of justice. Judge Lynch thus recommended dismissing most of Petitioner's claims as procedurally defaulted.

In his objections to the Findings and Recommendation, Petitioner once again fails to adequately show cause and prejudice or a fundamental miscarriage of justice. Although Petitioner claims he suffered prejudice because he was not given full credit for time served, he does not offer any objective, external factor that impeded his efforts to comply with Montana's procedural rules. See High v. Ignacio, 408 F.3d 585, 590 (9th Cir. 2005) (discussing requirement for showing of cause). Nor does Petitioner establish, or even claim, actual innocence in his objections.

Accordingly, IT IS HEREBY ORDERED that Judge Lynch's Findings and Recommendation are adopted in full. Petitioner's habeas claims, identified as claims 1, 3-8, and 10-17 in Judge Erickson's July 14, 2005 Order, are procedurally defaulted, and Petitioner has not established the existence of either exception to the procedural bar applicable to those claims. Claims 1, 3-8, and 10-17 are therefore DISMISSED.

Dated this 24 day of January, 2007.

Donald W. Molloy, Chief Judge  
United States District Court